

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE WATCHMAKERS OF SWITZERLAND
INFORMATION CENTER, INC., ET AL.,

Defendants.

Supplemental to
Civil Action No. 96-170
Date: March 30, 2007

Civil Part I Judge

**JOINT MOTION OF THE UNITED STATES, AMERICAN WATCH ASSOCIATION,
INC., AND FOOTE, CONE & BELDING, INC. TO ENTER ORDER TERMINATING
THE FINAL JUDGMENT ENTERED AGAINST AMERICAN WATCH ASSOCIATION,
INC. AND THE FINAL JUDGMENT ENTERED AGAINST FOOTE, CONE &
BELDING, INC.**

The United States of America (“United States”) and Defendants American Watch Association, Inc. (“AWA”) and Foote, Cone & Belding, Inc. (“Foote”) move this Court to enter an Order terminating both the Final Judgment entered against AWA (“the AWA Final Judgment”) and the Final Judgment entered against Foote (“the Foote Final Judgment”) by this Court on March 9, 1960 in the above-captioned matter (collectively “the AWA and Foote Final Judgments”), and in support of this motion, state as follows:

1. On June 9, 2006, AWA and Foote jointly moved to terminate the AWA and Foote Final Judgments.
2. On June 9, 2006, the United States moved to establish procedures to terminate the

AWA and Foote Final Judgments.

3. The AWA and Foote Final Judgments are companion judgments to the Final Judgment entered in *United States v. The Watchmakers of Switzerland Information Center, Inc.*, Trade Reg. Rep. (CCH) 69,655 (S.D.N.Y. Mar. 9, 1960) (“the Watchmakers Final Judgment”),¹ which this Court terminated on January 16, 2007.

4. The notice published by Rolex Watch U.S.A., Inc. (“Rolex”) in connection with its proposed termination of the Watchmakers Final Judgment in The Wall Street Journal on April 6 and 7, 2006 and in the April 2006 issues of Modern Jeweler and Professional Jeweler² was sufficiently recent and broad to notify interested parties of the potential termination of the Watchmakers Final Judgment as well as the AWA and Foote Final Judgments.

5. The United States tentatively agreed to the termination of the AWA and Foote Final Judgments subject to the following conditions:

- a. that the United States publish in the Federal Register a notice, in the form attached as Exhibit A to the Stipulation filed with this Court on June 9, 2006, announcing the joint motion of AWA and Foote to terminate the AWA and Foote Final Judgments and the United States’ tentative consent to it, summarizing the Complaint and the AWA and Foote Final Judgments, describing the procedures for inspection and obtaining copies of relevant papers, and inviting the submission of comments;
- b. that a period for public comment shall end sixty (60) days after

¹ Both the Watchmakers Final Judgment as well as the AWA and Foote Final Judgments are attached hereto as Exhibit A. The AWA Final Judgment begins at 76,599, and the Foote Final Judgment begins at 76,604.

² A copy of Rolex’s notices are attached hereto as Exhibit B.

publication of the Federal Register notice required by the Stipulation filed with this Court on June 9, 2006, and that within a reasonable time after the conclusion of the sixty-day public comment period, the United States will file with the Court copies of all comments that it receives and its response to those comments;

c. that an Order, a proposed form of which was attached as Exhibit B to the Stipulation filed with this Court on June 9, 2006, terminating the AWA and Foote Final Judgments, may be filed and entered by the Court upon the request of any party or by the Court *sua sponte*, at any time at least seventy (70) days after publication of the Federal Register notice described above or at least ten (10) days after the close of the period for public comment; and

d. that the United States may withdraw its tentative consent at any time before the entry of an Order terminating the AWA and Foote Final Judgments by filing a notice of withdrawal of its consent with the Court and serving a copy of said notice upon all other parties.

6. The Court entered an Order establishing notice and public comment procedures for the joint motion to terminate the AWA and Foote Final Judgments on July 21, 2006.

7. On August 2, 2006, the United States published in the Federal Register a notice announcing the joint motion of AWA and Foote to terminate the AWA and Foote Final Judgments and the United States' tentative consent to it, summarizing the Complaint and the AWA and Foote Final Judgments, describing the procedures for inspection and obtaining copies of relevant papers, and inviting the submission of comments. A copy of this Federal Register notice is attached to this joint motion as Exhibit C.

8. Where, as here, the United States consents to termination of some or all of the provisions of an antitrust judgment, the issue before the court is whether such termination is in the public interest. *United States v. International Business Machines Corp.*, 163 F.3d 737, 740 (2d Cir. 1998) (“*IBM*”); *United States v. Am. Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983); *United States v. Loew’s Inc.*, 783 F. Supp. 211, 213 (S.D.N.Y. 1992); *United States v. Columbia Artists Mgmt., Inc.*, 662 F. Supp. 865, 869-70 (S.D.N.Y. 1987).³ Exercising “judicial supervision,” *IBM*, 163 F.3d at 740, the court should approve a consensual decree termination where the United States has provided a reasonable explanation to support the conclusion that termination is consistent with the public interest. *Loew’s*, 783 F. Supp. at 214.

9. The purpose of an antitrust decree is to remedy and prevent the recurrence of the violation alleged in the complaint. Where the government has consented to termination, the focus is on whether there is a “*likelihood* of potential future violation, rather than the mere *possibility* of a violation.” *IBM*, 163 F.3d at 742 (emphasis added). In this context, if the government reasonably explains why there is “no current need for” the constraints imposed by a decree, termination will serve “the public interest in ‘free and unfettered competition as the rule of trade,’” *Loew’s*, 783 F. Supp. at 213, 214 (quoting *N. Pac. Ry. v. United States*, 356 U.S. 1, 4 (1958)). Obsolete decrees are worse than unnecessary; they may themselves have anticompetitive effects, burdening the parties, the courts, and the competitive process. *See, e.g., IBM*, 163 F. 3d at 740; *Loew’s*, 783 F. Supp. at 214. Where the United States and the defendants jointly seek termination long after entry of a decree that has no termination date, it is reasonable

³ The Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (the “Tunney Act”), by its terms applies only to the approval of consent decrees.

to presume that the violation has long since ceased and that competitive conditions were adequately restored.

10. In its Response to Public Comments in connection with the Watchmakers Final Judgment filed with the Court on January 12, 2007, the United States has explained the meaning and proper application of the public interest standard and incorporates that statement herein by reference.

11. The 60-day comment period in connection with the AWA and Foote Final Judgments commenced on August 2, 2006 and terminated on October 1, 2006.

12. The United States received no comments within the 60-day comment period. For the reasons outlined by the United States in its Memorandum in Response to the Joint Motion of the AWA and Foote to Terminate the AWA and Foote Final Judgments filed with the Court on June 9, 2006, the United States remains convinced that termination of the AWA and Foote Final Judgments is in the public interest.

13. As of the date of this motion, all of the foregoing conditions have been fulfilled and termination of the AWA and Foote Final Judgments under the procedures established by this Court is timely as of March 30, 2007.

14. The United States, AWA, and Foote request that this Court enter the Order Terminating the Final Judgment Entered Against Defendant AWA and the Final Judgment Entered Against Defendant Foote, which is attached to this joint motion as Exhibit D.⁴

⁴ The proposed order attached to this motion is the same order attached as Exhibit B to the Stipulation filed with this Court on June 9, 2006.

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

_____/s/_____
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Dated: March 30, 2007.

FOR DEFENDANT
AMERICAN WATCH ASSOCIATION, INC.

_____/s/_____
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FOR DEFENDANT
FOOTE, CONE & BELDING, INC.

_____/s/_____
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Dated: March 28, 2007.

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of March, 2007, I caused a copy of the foregoing Joint Motion of the United States, American Watch Association, Inc. (“AWA”), and Foote, Cone & Belding, Inc. (“Foote”) To Enter Order Terminating the Final Judgment Entered Against AWA and the Final Judgment Entered Against Foote to be served on defendants AWA and Foote at the addresses given below:

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